IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1405 of 2007

Gopal @ Gopalakrishnan .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The Commissioner of Police
Greater Chennai
Egmore, Chennai-8. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.K.Selvakumarasami
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner/detenu, as the said authority arrived at the subjective satisfaction that the detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. Challenging the abovesaid detention, the detenu himself has preferred this Habeas Corpus Petition seeking a writ of habeas corpus to call for the records leading to the detention of the detenu, detained at Central Prison, Puzhal Chennai by the second respondent vide his order in Memo No.269/BDFGISSV/2007, dated 28.6.2007, to quash the same as illegal and to consequently direct the respondents to produce him before this Court and to set him at liberty.

3.1. The order of detention dated 28.6.2007 was passed on the basis of ground case in Crime No.583 of 2007 for alleged commission of offences under Sections 341, 397, 336, 427 and 506(2) IPC. The allegation against the detenu was that on 15.6.2007 at 02.30 pm, when one Kannan (complainant) was proceeding to to his shop, the detenu wrongfully restrained him and asked him time, thereafter, he took out a knife and held the same over the stomach of the complainant, threatened him and voluntarily took away Rs.200/- from the shirt pocket of the complainant. The public heard the hue and cry of the complainant and came for his rescue and tried to apprehend the detenu. On noticing the same, the detenu picked up stones from roadside and pelted the same against the public. The detenu also picked up cool drink bottles and hurled them against the public. The public who were at the spot noticed the atrocious activities and ran for safer places out of fear of danger to their lives. Taking advantage of the panic situation, the detenu tried to escape, but the police personnel, who were on rounds, apprehended him.

3.2. That apart, the detaining authority also took note of four adverse cases pending against the detenu in Crime No.443 of 2006 on the file of Esplanade Police Station for the offence under Section 379 IPC; Crime Nos.346 and 514 of 2007 on the file of Koyambedu Police Station for the offences under Section 457 and 380 IPC; and Crime No.395 of 2007 on the file of Thirumangalam Police Station for the offence under Section 341, 397 and 506(2) IPC.

3.3. Considering these activities of the detenu are prejudicial to maintenance of public order, the detaining authority passed the impugned order of detention.

4. The only contention of the learned counsel for the petitioner is that even though in the grounds of detention, while dealing with the real possibility of the detenu coming out on bail, the detaining authority stated that the detenu is in remand in K.10 Koyambedu Police Station Crime Nos.346/2007, 514/2007, 583/2007 and V-5 Thirumangalam Police Station Crime No.395/2007, the detaining authority has not furnished any materials to substantiate that the detenu was under valid remand in all the said crimes and there is a real possibility of his coming out on bail and therefore, the order of detention is vitiated.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. In support of the order of detention, even though Mr.N.R.Elango, learned Additional Public Prosecutor, placing reliance on the Special Report dated 25.6.2007, submitted that three adverse cases have been referred to in the special report dated 25.6.2007, we find from the perusal of the said special report that, even though a reference has been made to three adverse cases, referred to above, it has been only stated that the detenu was arrested in ground case and that he was remanded. There is no mention as to the remand of the detenu with reference to the adverse cases. In all, the order of detention is bereft of details which are essential to prove that the detenu was in remand in the adverse cases as well as the ground case. The non-furnishing of materials substantiating the remand of the detenu in the adverse cases, in our considered vitiates the order of detention.

For the reason aforesaid, the impugned order of detention is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 28.6.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:
1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2.The Commissioner of Police
Greater Chennai, Egmore, Chennai-8.

3.The Public Prosecutor, High Court, Madras.

4. The Superintendent,
Central Prison, Puzhal, Chennai.

5. The Joint Secretary to Government,
Public (Law and Order), Fort St.George, Chennai -9.

H.C.P.No.1405 of 2007

VSV(CO)
RVL 04.01.2008

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/